

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 654 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LUCIOUS S CHRISTIAN

Versus

UNION OF INDIA

Appearance:

MR GT PARIKH for Petitioner

MR AK CLERK for Respondent No. 1, 4

SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/07/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner before this Court is a former employee of the Life Insurance Corporation of India, the

respondent no. 2 herein [hereinafter referred to as, 'the Corporation']. The petitioner was appointed as a Typist in Class-III service of the Corporation on 1st June, 1971. In the year 1994, the petitioner applied for leave with a view to going abroad. His application for leave from 7th November, 1994 to 4th February, 1995 was sanctioned. However, on expiry of the period of leave, the petitioner did not report for duty and remained absent from duty without leave. On 24th May, 1995, a notice was issued upon the petitioner to show cause why disciplinary action should not be commenced against him. In response to the said show cause notice, on 10th June, 1995, the petitioner tendered a letter of resignation. Under order dated 14th November, 1995, the said letter of resignation was accepted and was made effective from 11th July, 1995. It is undisputed that on petitioner's resignation from service, his accounts with the Corporation were settled and he was paid amount of provident fund including the contribution by the Corporation.

It appears that while the petitioner's resignation was pending consideration before the Corporation, the Central Government introduced a pension scheme known as The Life Insurance Corporation of India [Employees'] Pension Rules, 1995 [hereinafter referred to as, 'the Pension Rules'] by its Notification dated 28th June, 1995. The Pension Rules were made effective from 1st November, 1993. Pursuant to the said Notification, the petitioner filled-in necessary forms for pension, however, under order dated 6th December, 1995, the same was denied to him. Feeling aggrieved, he gave a notice dated 13th November, 1997 which was replied to by the Corporation on 18th November, 1997. The petitioner's request for pension having been turned down, the petitioner has preferred the present petition.

Mr. Parikh has submitted that the petitioner had served the Corporation for more than 20 years and his resignation ought to have been considered to be an application for 'voluntary retirement' and the petitioner ought to be treated as having retired from service of the Corporation. He has further submitted that be it resignation or voluntary retirement, both leads to the termination of master and servant's relationship prematurely at the volition of the servant concerned. Both, therefore, should be treated at par and the servant concerned who had resigned from service should be entitled to the same benefits as that of the servants who are permitted to take voluntary retirement. Mr. Parikh has also challenged the validity of Rule 23 of the

Pension Rules. It is contended that the said Rule 23 is arbitrary and discriminatory inasmuch as it treats the resignation and voluntary retirement differently. Thus, servants who are otherwise similarly situated are meted discriminatory treatment. The equals are given unequal treatment. The rule is, therefore, arbitrary, unconstitutional and ultra vires Article 14 of the Constitution. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in the matter of M/s. J.K Cotton Spg. & Wvg. Mills Company Limited, Kanpur v. State of U.P & Ors., [AIR 1990 SC 1808] and of Committee of Management Dayanand Arya Kanya Degree College, Moradabad & Ors. vs. Director of Higher Education, Allahabad & Ors., [1998 (4) SCC 104] and of Praduman Kumar Jain v. Union of India & Anr., [1994 (4) SLR 439]. Mr. Parikh has also relied upon judgments of this Court in the matter of Ramabhai Popatbhai Bhangji & Anr. vs. State of Gujarat & Ors. [2000 (1) GLR 437] and of Punjab & Haryana High Court in the matter of Suresh Kumar Sharma vs. The State of Haryana & Ors., [1999 (5) SLR 649] and of Central Administrative Tribunal, New Delhi in the matter of Smt. Bimla Devi vs. Union of India & Ors., [1992 (2) SLJ 310].

21.7.2000

Mr. Clerk has appeared for the Corporation and has contested the petition. He has submitted that the resignation and the voluntary retirement both lead to severance of master and servant relationship at the volition of the servant, but have different and distinct connotation in the service jurisprudence and cannot be equated with one another. He has relied upon the averments made in the counter affidavit and has pointed out several distinctive features of resignation as well as of voluntary retirement. He has submitted that the resignation and the voluntary retirement are distinct ways of termination of service at the volition of the servant concerned. The persons who resign from service and the persons who take voluntary retirement do not necessarily form a common group calling upon an equal treatment. It, therefore, cannot be said that equals have been given unequal treatment nor can it be said to be arbitrary or discriminatory within the meaning of Article 14 of the Constitution. Besides, this question has been considered earlier by this Court and by an order dated 3rd April, 1997 made in the matter of H.M Thakkar v. Senior Divisional Manager {Special Civil Application No. 249 of 1997}, this Court [ie., myself] has held that

the persons who resign from service are not entitled to the benefits under the pension scheme. The said order has been confirmed by the Division Bench on 5th November, 1998 in Letters Patent Appeal No. 574 of 1997. A similar view has been expressed by the Division Bench of this Court in the matter of Premji Kanji Masani v. United India Assurance Company Limited [1999 (3) GLR 2604].

In the matter of M/s. J.K Cotton Spg. & Wvg. Mills Company Limited [Supra], the Hon'ble Supreme Court has held that acceptance of voluntary resignation tendered by the employee cannot be said to be retrenchment. In the matter of Dayanand Arya Kanya Degree College [Supra], the question was that of continuance in service of a servant after tendering resignation from the post and whether acceptance of the resignation tendered by the writ petitioner was valid. In the matter of Praduman Kumar Jain [Supra], the appellant having served the Central Government for more than 10 years, resigned from service before confirmation and joined the National Thermal Power Corporation Limited. Upon his retirement, he insisted that he was a substantive employee of the Central Government and was entitled to pension and other retiral benefits under the rules. The Tribunal rejected the claim. In appeal, the Hon'ble Supreme Court held that the appellant was appointed on a permanent vacancy and had successfully completed the probation period. The Court, therefore, held him to be entitled to pro-rata pension from the Central Government. In the said matter, the Hon'ble Supreme Court was not called upon to answer whether the employee who resigned from service should be entitled to pensionary benefits or not. In the matter of Ramabhai Popatbhai [Supra], this Court held that the safai kamdars who had resigned after 30 years' service due to physical unfitness before reaching the age of superannuation were entitled to retiral benefits. In the matter of Suresh Kumar Sharma [Supra], the writ petitioner requested to permit him to resign alongwith all retiral benefits. The said request was accepted, however, he was informed that he would not be entitled to any other benefit except the amount deposited in his GPF and GIS. The Court held that the respondent Government ought to have considered the petitioner's request as that of voluntary retirement. In the matter of Smt. Bimla Devi [Supra], the husband of the applicant Bimla Devi was held to have put in less than 10 years' service and was denied the benefit of pension and other retiral benefits. The Court held that the resignation tendered by the husband of the applicant became effective only on its acceptance and that being

the relevant date, he had worked more than 10 years. The appellant was, therefore, held to be entitled to family pension. As it is evident, neither of these judgments deals with the matter at issue in the present petition and none of them can be said to be applicable on the facts of the present case.

The Division Bench of this Court in Letters Patent Appeal No. 574 of 1997 has in no uncertain terms held that, 'but it cannot be gainsaid that there is distinction between voluntary retirement and resignation'. The same is the view expressed in the matter of Premji Kanji Masani [Supra].

In view of the above binding judgments, it cannot be said that the resignation and the voluntary retirement are similar and are required to be treated at par. Rule 23 of the Pension Rules is neither ultra vires Article 14 of the Constitution of India nor it is invalid in any other manner. In view of the provisions contained in Rule 23 of the Pension Rules, the petitioner having resigned from service, his previous service stands forfeited and would not qualify for pensionary benefits. The petitioner's claim for pension under the Pension Rules has, in my view, rightly been rejected.

Petition is dismissed. Rule is discharged.
There shall be no order as to costs.

Prakash *